

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
October 5, 2009**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Raymond Arroyo
Guy Hartman
Dan Koch
Christopher Owens
Joseph Frasco, Vice-Chairman
William Martin, Chairman
Robert Bicocchi (Alt #1)
Michael Bieri (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Maser Consulting, PA
Steve Lydon, Burgis Associates
Borough Planner

ABSENT: Eric Oakes(excused absence)

4. MINUTES - The Minutes of the 8/3/09 & 9/14/09 were carried to the next meeting.

5. CORRESPONDENCE: As listed on Agenda and read:

1. Letter from Gene Giorgini, dated 9/15/09 RE: 15 Bergenline Ave;

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2. Memo from Steve Lydon, Burgis Associates dated 9/17/09
RE: Pompilio's Pizza, Inc., 221-223 Westwood Ave.;

6. **VOUCHERS:** A motion to approve vouchers totaling \$1,488.75 was made by Mr. Frasco, seconded by Mr. Arroyo, and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Paragon Federal Credit Union, Washington Avenue -** Held until 11/2/09 (being reviewed by Mr. Zen and Board);

8. **PENDING NEW BUSINESS:** None

9. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in.

1. **Kevin Seger, 56 Hillside Avenue - Variance -** Nancy Saccente, Esq. represented the applicant, Kevin Seger, also present, and reviewed from the prior meeting that the Board requested they walk through the property again to see if the plans could be modified in accordance with the Board's comments at the last public meeting. They also asked for a topographical survey. After speaking with Mr. Ritchie of Azzolina and Feury, the topographical survey would not be as helpful as one might think because looking at the map would provide a bunch of numbers, but looking at the property would provide more information as to how the property actually exists. Walking the property would give a lay of the land. They also had the measurements of the neighbor's property, which they could give verbally, to be followed up with written documentation and are asking to conclude this evening. Mr. Martin inquired, and Mr. Seger stated he is considering moving the pool, but if he moved the pool to the back of the house on the hill, where the water flows downward, he would have to remove a tree. Because of the slope the water flows downward. Where the pool is now, it could be moved a little, but would hinder the water flow down the sides of the house. Mr. Martin commented we have no additional documentation, but do they want to act on it now. Mr. Seger recited the distances he measured: 30' from the corner of the neighbor's house on a diagonal, and 20' is the distance from the back of the neighbor's house to the pool. The neighbor's rear

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corner is 6' from the property line. Mr. Raimondi asked if he had any drainage problems now. Mr. Seger responded no. At one time he did, but it is perfect now. It is actually the best place to put the pool because the property is very difficult being on a hill, and the water flows around.

Mr. Martin called for any questions by Board Members. Mr. Owens inquired about water flow around his property. Mr. Hartman asked if he sought solutions to the proper drainage problems. Mr. Seger responded his landscaper pitched it in a proper manner to resolve the problem. If he were to move the pool he would have to dig up several feet of blue stone. Mr. Frasco questioned the applicant and commented if he came in for the variance, he would have had to place the pool in a different location. Mr. Martin felt the pool should be moved away from the property line. Mr. Seger said he does not know how to move the drainage and blue stone, and he cannot afford to. Mr. Martin stated the Board cannot take monetary reasons into consideration. He felt applicant could level another spot and move the pool to that location. He was hoping the applicant would get a topographical survey. Mr. Seger stated Mr. Ritchie stated it would not be helpful. Mr. Raimondi inquired about the Mr. Ritchie gave. Ms. Saccente explained he said it was just numbers, and seeing the photos would give the Board a better feel of what exists there. Mr. Raimondi said the topo would give the Board the numbers and flow of the land. The Board could see the details.

Mr. Martin inquired if the applicant wanted to conclude this evening. Ms. Saccente conferred with her client while the Board took a recess at 8:55 p.m.

The Board reconvened at 9:05 p.m. After conferring with her client, Ms. Saccente advised they feel they are in a difficult position and asked if the Board could give a straw vote as to whether they would approve of moving the pool 11' from the property line. Mr. Martin and Mr. Rutherford stated they do not do straw votes, and they must tell the Board what they are applying for and provide documentation. At the last meeting Mr. Martin said they recommended they return with a definitive plan of what they were applying for. Ms. Saccente advised her client does not want to continue to come back and they would ask to move the pool 11' and be in compliance with the side line requirements and 10' from the rear of the house, providing

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documentation, and they would be in compliance. They request that the Board take the vote tonight to approve the applicant as amended on the record this evening that is to put the pool in compliance with the setbacks and with the other variances.

Mr. Rutherford advised that in the past the Board has authorized him to prepare a Resolution of Approval, and if the Board authorizes him to do so, she could provide a revised plan to him before the next meeting, he could reference that in the resolution. A brief discussion ensued.

Ms. Saccente stated the pool is not in the side yard and is in compliance, but the spa is. The Board did not want to approve anything without a document showing exactly where it is. Mr. Rutherford advised he is not suggesting an approval, but authorizing him to simply prepare a Resolution for action at the next meeting with a plan. It would not constitute an approval of the application. We will still be left with a variance for the deck and side yard. The matter would be carried to the 11/2/09 meeting, where it would be approved or disapproved at that time. If approved, the Resolution could be adopted.

The matter was opened to the public. Gary Conklin, 46 Kinderkamack Road came forward and asked for a review of the variances. Mr. Lydon enlightened the witness with the variance details. There were no further questions.

Mr. Rutherford gave an overview as stated above. Mr. Hartman commented the Board should wait to see the plans. Mr. Arroyo questioned the issue. Mr. Martin was not comfortable with the procedure and wanted to see the plans. He had concerns with the application. Mr. Arroyo acknowledged the costliness of a full topo and suggested perhaps the survey could put some numbers on the survey. Mr. Martin was not comfortable with that, but the Board could proceed as it wished. Mr. Frasco reviewed Mr. Rutherford's methodology. A further discussion ensued. He would agree that it did not really pay to have the Resolution prepared, and the Board should wait until the next meeting to see the plan. Mr. Bicocchi felt too there were too many issues to prepare a Resolution, and the Board should wait until the next meeting. If it were just housekeeping, he would say go forward.

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Mr. Hartman moved to have the applicant return next month with a modified plan, with second by Mr. Arroyo. No vote was necessary, as applicant agreed to carry to the next meeting. The motion was withdrawn. The matter was carried to the 11/2/09 meeting with no further notice.

2. J. LaDuca, 80 Ash Street - Appeal - Section 68 & Variance - Mr. Rutherford reviewed the publication documents and found them to be in order. James LaDuca of Ponte Vedre, Florida, was sworn in. Andrew Fethes, Architect, Oradell, NJ, were sworn in. Mr. Fethes was accepted. Mr. Laduca stated he was applying for a Section 68 and an expansion of a non-conformity of a two-family home.

Mr. Martin recalled this may have come before the Board before. Mr. Fethes explained it was for an expansion of a non-conforming use. They did not withdraw, but they never reached the agenda.

Mr. Martin stated they would begin with the Section 68 Certificate. Mr. Laduca purchased the house in 2001 as a two-family. There were no questions from the Board or public.

A motion for approval of the Section 68 Certificate was made by and seconded by Mr. Arroyo and seconded by Mr. Koch. On roll call vote, all members voted yes. Mr. Bieri was not needed to vote.

The applicant continued for the variance. Mr. Fethes reviewed the architectural plans revised to 9/18/09 as displayed. He described the plans in detail. Mr. Martin asked about the FAR. It talks about interior space, as clarified by Mr. Lydon. Mr. Laduca later obtained for building permits and the necessary inspections. Mr. Fethes advised the work was done previously without a permit prior to his involvement. Mr. Laduca applied to the Building Dept. as part of a Continuing C/O, and obtained permits, but in the process, a question came up with Mr. Strabone that there was an expansion of a non-conforming use, so his denial letter was based on that. What he is showing is a wood deck over the property. The structure has not changed. Mr. Frasco asked and applicant stated there was already a deck there when he purchased the property. There was no variance. Since that time, he enlarged the deck by adding stairs and deck in front of the stairs.

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Mr. Martin inquired if there was a notice issue as a result of this. Also, does the expansion of the attic to add a fourth bedroom trigger another variance for a two-car garage. Mr. Rutherford advised the only issue raised by the Zoning Officer was the deck, but there is the catch-all phrase in the notice. It could be argued that the interior changes really do not make a difference. Mr. Fethes commented the fourth bedroom can only be used as a sitting area, not a bedroom. Mr. Martin suggested removing the closets. Also, it would be written in the Resolution; however, this has happened in the past and is a difficult enforcement issue. There has to be rules. If it is a sitting room with no closets, then it is not a bedroom and would not trigger a variance for a two-car garage.

Notice was discussed. Mr. Rutherford and advised there were three elements of the application: grade level deck, second level deck, and upstairs apt. It appeared a bulk variance was required, and applicant would have to renotice. Mr. Raimondi recommended an updated survey to show the offsets. Mr. Martin stated a new survey would be required, and Mr. Lydon would update his report. They would then know what they have to notice for. The matter was carried to 12/7/09 with a time extension granted through 12/7/09.

3. P. Petrina, 118 Third Avenue - Variance - David Rutherford, Esq. to contact applicant and advise if they do not appear in November, the Board will discuss dismissal without prejudice. Also, Mr. Raimondi pointed out there is an escrow deficiency. Carried to 11/2/09;

4. Borduin, 325 Lafayette Avenue - Application for Certification of Non-conforming Use - Section 68 - Mr. Borduin sworn in and testified he purchased it as a two-family home and it has been used as such ever since that time. It is a side-by-side, two family home, with one front door that splits into two doors in the front hall. Mr. Martin commented it appears from the tax records that it is a two-family home. There were no further questions, comments or discussions. The matter was opened to the public. A motion for approval based on the evidence supplied was made by Mr. Frasco and seconded by Mr. Owens. On roll call vote, Mr. Koch, Mr. Frasco, Mr. Arroyo, Mr. Hartman, Mr. Owens, Mr. Bicocchi, and Mr. Martin voted yes. Mr. Bieri was not needed to vote.

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5. Bohen, 567 Lafayette Avenue - Variance - Publication one day short - Carried to 11/2/09;

6. Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion - Donald Nemcik, Esq. appeared on behalf of the applicant. John J. Lamb, Esq. appeared on behalf of the objector, First Westwood Realty, and put his objections on the record as to an incomplete notice. Steve Lydon recused himself as First Westwood Realty their landlord. After discussion, the matter was carried to 11/2/09; Mr. Rutherford to contact a substitute planner, other than David Spatz, for the next meeting.

7. New St. Mark AME Zion Church, 100 palisade Avenue - Minor site Plan application -Carried to 11/2/09 at the request of the applicant;

10. DISCUSSION: Louis Raimondi discussed and advised the Board he is going to be leaving Maser Consulting as of 10/15/09, and he will be associated with the firm Brooker Engineering. Mr. Martin advised the Board has always engaged Mr. Raimondi himself with the firm he is associated with at the time. The contract with Maser is still in effect. Mr. Raimondi advised they would give up the contract, but a letter should be received. Mr. Raimondi would follow up with Maser Consulting.

Escrows - Mr. Raimondi stated if a bill was sent by the professionals to the applicant, perhaps that would help with the escrow collection. This should be done through the Finance Office.

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:20 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary